

**OPINION
75-123**

March 10, 1975 (OPINION)

Representative Robert F. Reimers
Speaker, House of Representatives
State Capitol
Bismarck, ND 58505

Dear Representative Reimers:

This is in response to your letter of 6 March 1975 with regard to House Bill No. 1531, 1975 Session.

You state that a question has been raised as to whether this violates "Article 66 of the North Dakota Century Code."

Apparently there has been some typographical error in your designation of Article 66 of the North Dakota Century Code, i.e. Code divisions in this state have not been given article numbers since the 1800's. We thus assume your reference is to a constitutional provision rather than a statutory provision. Additionally Article 66 is now Section 14 relating to eminent domain, the so-called quick take etc., which is almost totally irrelevant to the nomenclature and purposes of House Bill No. 1531, on which basis we would assume that what you meant to ask was whether House Bill No. 1531, 1975 Session violates Article 56 of the North Dakota Constitution which would at least be relevant to the mentioned house bill.

The relevant provisions of said Article 56 would be as follows:

1. Revenue from * * *motor vehicle registration and license taxes * * *after deduction of cost of administration and collection authorized by legislative appropriation only and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

House Bill No. 1531 with amendments designated in Bill Status Report of date March 6, 1975 provides for the issuance of bicentennial motor vehicle license plates in lieu of the standard motor vehicle license plates, upon the application of the motor vehicle owner together with an additional fee of ten dollars. Section 3 of the bill provides that moneys in the motor vehicle registration fund accruing from the sale of special bicentennial number plates in excess of the cost to issue same shall be credited to the American Revolution Bicentennial Commission for the purpose of carrying out the powers and duties of such commission. Section 5 of the bill appropriates out of any moneys in the motor vehicle registration fund in the state treasury not otherwise appropriated, the sum of \$300,000.00 or so much thereof as may be necessary to the motor vehicle registrar for the carrying out of his responsibilities under this Act during the biennium beginning July 1, 1975 and ending June 30, 1977.

We would see no problem with the basic concept of the bill, i.e., the issuance and handling of the usual standard license plates and/or tabs would be a cost of administration and collection which could be authorized by legislative appropriation to be paid out of the revenue from any of the taxes listed although we would assume that the proceeds of the usual standard license fee would be used only for the purposes specified in said Article 56. The additional ten dollar fee provided for in said House Bill No. 1531 is thus actually not a motor vehicle registration and license tax, but is actually a fee paid for the privilege of decorating an automobile with the bicentennial plate on which basis same would not be a motor vehicle registration and license tax governed by said Article 56 and the proceeds from such additional ten dollar fees would not have to be expended for the purposes expressed in said Article 56 but could be spent for the purposes provided therefor in said House Bill No. 1531.

Conceivably problems could arise with regard to Section 5 of the bill. It provides for an appropriation from moneys in the "motor vehicle registration" fund up to \$300,000.00 apparently for the purpose of preparing the bicentennial plates previously described in said House Bill No. 1531 and presumably the handling thereof. Constitutional questions might arise if moneys received from the license tax itself as opposed to moneys received for the bicentennial plates were expended for the preparation of the bicentennial plates. However we are informed that the motor vehicle registrar will not expend this appropriation prior to having "orders" presumably with the ten dollar fees for the plates. If this is handled in such manner, at no time would revenue from motor vehicle registration and license taxes be used for such purposes and therefor no constitutional question would be raised.

In view of the specific limitation of said Article 56 as to the use of the moneys derived from motor vehicle registration and license taxes to "construction, reconstruction, repair and maintenance of public highways and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways," it is obvious that none of the moneys derived from licensing can be used for bicentennial purposes as designated in Section 3 of House Bill No. 1531. Additionally the funds derived from licensing could not be used for subsidizing the bicentennial programs. To the point in time that fees for cost of manufacture and administration are still tied up in bicentennial plates, there could be no transfer from motor vehicle registration fund to the bicentennial commission fund. However this problem was apparently anticipated in the drawing of and amendments to the bill, insofar as Section 3 of the bill only provides for the transfer of funds "accruing from the sale of special bicentennial number plates in excess of the actual cost to issue such plates". (Emphasis supplied by us) On this basis it is our opinion that there is no question created here as to any use of Article 56, controlled funds to subsidize the bicentennial commission.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General